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THE LAW OF BLASPHEMOUS LIBEL.

THE SUMMING UP

IN THE CASE OF

REGINA *v.* FOOTE & OTHERS.

REVISED AND WITH A PREFACE

BY THE

LORD CHIEF JUSTICE OF ENGLAND.

LONDON :

STEVENS AND SONS, 119, CHANCERY LANE.

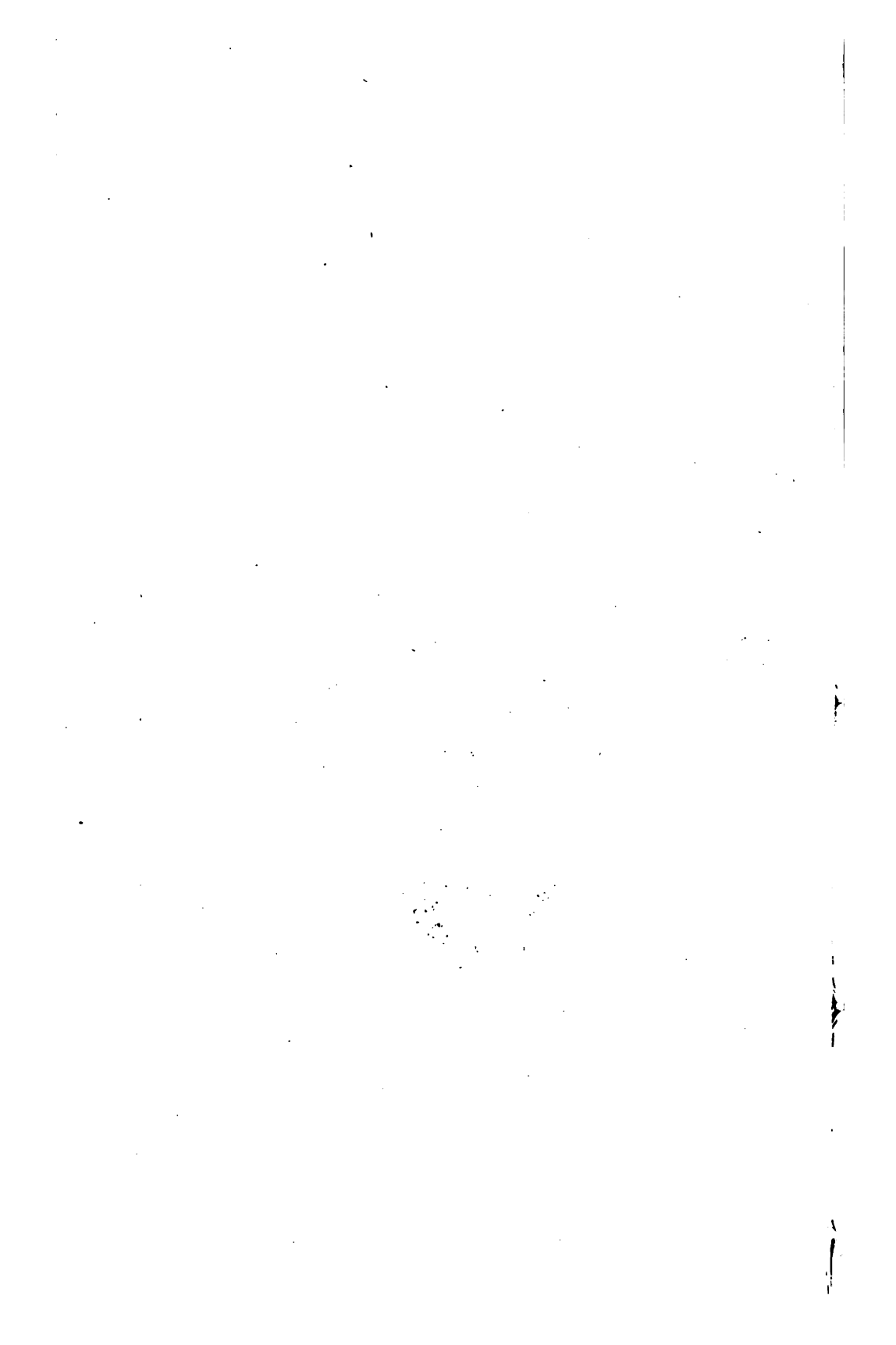
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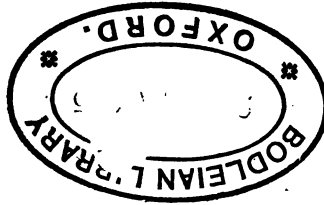


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PREFACE.

No one can be more sensible than I am of the faults and shortcomings of the summing up which is here published. I confess that I did not appreciate the importance of the occasion. Still less did I foresee the interest which my words would excite, or conceive that I was doing anything but a common duty in a common manner. From causes with which I need not trouble the public, I was not equal to any careful or sustained effort. This charge, therefore, must not be considered as put forward by me as having any pretension to be a complete or exhaustive discussion of the questions handled in it. But it has excited more attention than it deserves, and it has been much misrepresented. I am told by others whose judgment I respect, that a correct version of it may be useful; and I have made the best use I could of the necessarily imperfect materials which are alone at my disposal. Accordingly this charge is now published; and I hope, though not quite in the sense of the young gentleman who is reported to have used the words, that "the law of the Chief Justice may be safely left to take care of itself."

C.



SUMMING UP TO THE JURY

IN THE CASE OF

REG. *v.* RAMSEY AND FOOTE.

GENTLEMEN OF THE JURY.

THE two defendants are indicted for the publication of blasphemous libels; and the two questions which arise for your consideration, are: First, Are these publications in themselves blasphemous libels? Secondly, If they are so, is the publication of them traced home to the defendants so that you can find them guilty.

I will begin with the last question, though it is reversing the logical order, because it is the shorter and more simple of the two. Both questions are entirely for you. When you have heard what I have to say to you as to the state of the law as I understand it, it will then be for you to pronounce a general verdict of Guilty or Not guilty.

Now for the purpose of this second question, which I deal with first, I will assume for the moment that these are blasphemous libels, but though I assume it now, I will discuss it with you afterwards. Assuming them then to be blasphemous libels, is the publication of them traced home to the defendants?

As you are not the same jury who tried Mr. Bradlaugh, it is necessary for me to repeat to you the direction on this subject which I gave a few days ago to the jury which tried him. As to the matter of publication, the law has been altered in most important respects by a statute passed early in the reign of the present Queen,—6 & 7 Vict. c. 96. It used to be the law that the proprietor of a newspaper was criminally, not merely civilly, but, criminally responsible for a libel inserted in his paper, and that a bookseller or publisher was criminally responsible for a libel in any book which was sold or published under his authority, even though the newspaper proprietor, or the bookseller or publisher did not know of or authorize the insertion of any libel, and did not even know of its existence. But this in the *criminal* law was an anomaly and a grievance which the statute I have referred to was, in its seventh section, intended to remedy. That section came to be considered in the case of *Reg. v. Holbrook*, in which a gross libel on the Town Clerk of Portsmouth had been published in a Portsmouth newspaper. The case was twice tried at Winchester, first before Lord Justice Lindley, and secondly before Mr. Justice Grove. On each occasion the ruling of the Judge who tried the case, was questioned in the Queen's Bench in the time of my predecessor in this seat; on each occasion by the same three Judges, Lord Chief Justice Cockburn, and Mellor, and Lush, JJ.; on each occasion there was the same difference of opinion, the Lord Chief Justice, and Lush, J., holding one

way and Mellor, J., the other. But, notwithstanding this difference of opinion, the case is a binding authority upon me, and I lay down the law to you in the terse and clear language of Mr. Justice Lush. 'The effect of the Statute,' says he (4 L. R. Q. B. 50), 'read by the light of previous decisions, and read so as to make it remedial, must be, that an authority from the proprietor of a newspaper to the editor or publisher to publish what is libellous, is no longer to be, as it formerly was, a presumption of law, but a question of fact. Before the Act the only question of fact was, whether the defendant authorized the publication of the paper, now it is whether he authorized the publication of the libel. . . . Criminal intention is not to be presumed, but is to be proved, and in the absence of evidence to the contrary, a person who employs another to do a lawful act, *i.e.*, to publish, is to be taken to authorize him to do it in a lawful and not in an unlawful manner.'" Such is now the law laid down in admirable language by great authority; and it is for you to say whether according to the law as so laid down these defendants (either or both of them) did or did not authorize the publication of these libels.

On the trial of Mr. Bradlaugh this question of fact was the question in the case; he grounded his defence upon the contention, that whatever was the character of the published matter, the publication was not by his authority. That was his defence; and upon that defence, so far as I may presume to assign reasons for the general verdict of a jury, he was acquitted. In the

trial before us the process has been reversed. The fact of publication by the defendants has hardly been contested. The evidence is all one way ; it is uncontradicted and it is overwhelming. It is proved that the defendant Ramsey sold the papers which contained the libels. It is proved that the articles charged as libellous were inserted by the express direction of the defendant Foote. There is nothing to qualify this proof ; the defendants in fact do not deny their liability ; and though the case is for you, I do not know that I need refrain from saying that, if upon the evidence you have heard, you think both the defendants liable for the publication of these alleged libels, I shall entirely agree with you.

That however is, comparatively speaking, the least matter you have to decide ; for the proof is clear, and it is not disputed. The great point still remains, Are these articles within the meaning of the law blasphemous libels ? Now that, as you have been truly told, is a matter absolutely for you. On you is the responsibility, after looking at them and reading them, of saying whether they are or are not blasphemous libels. My duty is to explain to you as clearly as I can what is the law upon the subject. My duty, further, is not to answer the speeches of the defendants ; (that is no part of the duty of a judge), but to point out to you what in their arguments is in my judgment wellfounded, and what is not ; and then, when you have listened to me, the question is entirely for you. I am sure from my experience of juries that, in a criminal case especially, they will obey the law as declared by

the judge ; they will take the law from the judge, whether they like it or do not like it, and apply it honestly to the facts before them.

Gentlemen, I have said before, and I take the freedom to repeat, that it is far more important the law should be administered with absolute integrity, than that in this case or in that the law should be a good law or a bad one. The moment juries or judges go beyond their functions, and take upon themselves to lay down the law or find the facts, not according to the law as it is, but according to the law as they think it ought to be, then the certainty of the law is at an end ; there is nothing to rely upon ; we are left to the infinite variety and uncertainty of human opinion ; to caprice which may at any moment influence the best of us ; to feelings and prejudices, perhaps excellent in themselves, but which may distort or disturb our judgment, and distract our minds from the single simple operation of ascertaining whether the facts proved bring the case within the law as we are bound to take it. Forgive me if I seem to press too earnestly upon a special jury of Middlesex these obvious commonplaces. If at my age, with so much to bring about a temper of indifference, with the training which a whole life spent in judicial pursuits ought to have brought with it ; if I feel, as I confess I do, that it is hard in a case like this to be perfectly just and absolutely impartial, it may perhaps be that to some of you at least my earnest warning may not be absolutely useless ; at any rate I am sure you will pardon me for having presumed to utter it.

Gentlemen, you have heard with truth that these things are, according to the old law, if the dicta of old judges, dicta often not necessary for the decisions, are to be taken as of absolute and unqualified authority,—that these things, I say, are undoubtedly blasphemous libels, simply and without more, because they question the truth of Christianity. But I repeat what I said on the former trial that, for reasons which I will presently explain, these dicta cannot be taken to be a true statement of the law, as the law is now. It is no longer true, in the sense in which it was true when these dicta were uttered, that Christianity is part of the law of the land. In the times when these dicta were uttered, Jews, Roman Catholics, Nonconformists of all sorts were under heavy disabilities for religion, were regarded as hardly having civil rights. Everything almost, short of the punishment of death, was enacted against them. The epithet “ferocious,” which has been applied to the statute of William III., to which so much reference has been made, is hardly stronger than that statute deserves. Jews, it is true, were excluded from Parliament in a sense by accident, for the oath which excluded them was not pointed at them; but no one can doubt that at that time if it had occurred to anyone that they were not excluded, a law would have been forthwith passed to exclude them. Historically and as matter of fact, such was the state of things when these dicta were pronounced. But now, so far as I know the law, a Jew might be Lord Chancellor, most certainly he might be Master of the Rolls. The great and illustrious lawyer whose loss the

whole profession is deploring, and in whom his friends know that they lost a warm friend and a loyal colleague; he but for the accident of taking his office before the Judicature Act came into operation, might have had to go circuit, might have sat in a criminal court to try such a case as this, might have been called upon, if the law really be that "Christianity is part of the law of the land" in the sense contended for, to lay it down as law to a jury, amongst whom might have been Jews,—that it was an offence against the law, as blasphemy, to deny that Jesus Christ was the Messiah, a thing which he himself did deny, which Parliament had allowed him to deny, and which it is just as much part of the law that any one may deny, as it is your right and mine, if we believe it, to assert. Therefore, to base the prosecution of a bare denial of the truth of Christianity, *simpliciter* and *per se* on the ground that Christianity is part of the law of the land, in the sense in which it was said to be so by Lord Hale, and Lord Raymond, and Lord Tenterden, is in my judgment a mistake. It is to forget that law grows; and that though the principles of law remain unchanged, yet (and it is one of the advantages of the common law) their application is to be changed with the changing circumstances of the times. Some persons may call this retrogression, I call it progression of human opinion. Therefore, to take up a book or a paper, to discover merely that in it the truth of Christianity is denied without more, and thereupon to say that now a man may be indicted

upon such denial as for a blasphemous libel is, as I venture to think, absolutely untrue. I for one, positively refuse to lay that down as law, unless it is authoritatively so declared by some tribunal I am bound by. Historically, I cannot think I should be justified in so doing, for Parliament, which is supreme and binds us all, has enacted statutes which make that old view of the law no longer applicable. Nor is it any disrespect whatever to the great men of elder days to hold that what they said in one state of things is not applicable under another.

Gentlemen, when I last addressed a jury on this subject, I put a case to them which I thought was a *reductio ad absurdum* of the argument. I said that if the law was as contended for, it would be enough to say that anything was part of the law of the land, and that thereupon there could be no discussion and no reform; for that to attack any part of the law, however gravely and respectfully, would be, if not blasphemous yet seditious. Monarchy is part of the law of the land; primogeniture is part of the law of the land; the laws of marriage are part of the law of the land, and so forth. But if the doctrine contended for be true, to republish Algernon Sydney, or Harrington, or Locke, or Milton, would expose a man to a prosecution for a breach of the law of libel. But it shows how dangerous it is for some men at least to presume upon their knowledge. What I put as a *reductio ad absurdum* I have since discovered actually occurred, and was decided to be law by a Judge early in the last century. There is a case reported by

Lord Chief Baron Gilbert, *R. v. Bedford*, from which it appears that a man was actually convicted of a seditious libel for discussing gravely and civilly, and as the report of the case in Bacon's Abridgment, tit. *Libel*, says, "without any reflection whatever upon any part of the then existing Government," the respective advantages of an hereditary or elective monarchy. I need hardly say that if such a case arose now no Judge would follow that authority, no jury would convict, the whole proceeding would be denounced, and rightly denounced, as altogether monstrous.

It is clear, therefore, to my mind that the mere denial of the truth of the Christian Religion is not enough alone to constitute the offence of blasphemy. What then is enough? No doubt we must not be guilty of taking the law into our own hands, and converting it from what it really is to what we think it ought to be. I must lay down the law to you as I understand it, and as I read it in books of authority. Now, Mr. Foote, in his very able address to you, spoke with something like contempt of the person he called "the late Mr. Starkie." He did not know Mr. Starkie; he did not know how able and how good a man he was. Mr. Starkie died when I was young; but I knew him, and everyone who knew him knew that he was a man not only of remarkable power of mind, but of opinions liberal in the best sense; and if ever the task of lawmaking could be safely left in the hands of any man perhaps it might have been in his. But,

what is more material to the present purpose, the statement of the law by Mr. Starkie has again and again been assented to by Judges as a correct statement of the existing law. I will read it to you, therefore, as expressing what I lay down to you as law in words far better than any at my command.

“There are no questions of more intense and awful interest, than those which concern the relations between the Creator and the beings of his creation ; and though, as a matter of discretion and prudence, it might be better to leave the discussion of such matters to those who, from their education and habits, are most likely to form correct conclusions, yet it cannot be doubted that any man has a right, not merely to judge for himself on such subjects, but also, legally speaking, to publish his opinions for the benefit of others. When learned and acute men enter upon these discussions with such laudable motives, their very controversies, even where one of the antagonists must necessarily be mistaken, so far from producing mischief, must in general tend to the advancement of truth, and the establishment of religion on the firmest and most stable foundations. The very absurdity and folly of an ignorant man, who professes to teach and enlighten the rest of mankind, are usually so gross as to render his errors harmless ; but be this as it may, the law interferes not with his blunders so long as they are honest ones, justly considering, that society is more than compensated for the partial and limited mischief which may arise from the mistaken endeavours of honest ignorance, by the splendid advantages

which result to religion and to truth from the exertions of free and unfettered minds. It is the mischievous abuse of this state of intellectual liberty which calls for penal censure. The law visits not the honest errors, but the malice of mankind. A wilful intention to pervert, insult, and mislead others, by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations or artful sophistry, calculated to mislead the ignorant and unwary, is the criterion and test of guilt.

“A malicious and mischievous intention, or what is equivalent to such an intention, in law, as well as morals—a state of apathy and indifference to the interests of society, is the broad boundary between right and wrong.”

Now that I believe to be a correct statement of the law. Whether it ought to be or not is not for me to say. I tell you the law as I understand it, leaving you to apply it to the facts of the particular case before you. There was much force, no doubt, in the way in which Mr. Foote dealt with the passage in his address to you. The vagueness, the uncertainty which he insisted upon are possibly, however, inherent in the subject, and there is perhaps more to be said in favour of Mr. Starkie's view than may appear without reflection. There is a passage in his book taken, I believe, from Michaelis, in which it is pointed out with great truth that in one view the law against blasphemous libel may be for the benefit of the libeller himself, who, if there were no law, might find its

absence ill exchanged for the presence of popular vengeance and indignation.

“Now to the man who from his heart believes his religion, and regards it as the way to eternal bliss, and as the comfort both of life and death, and who of course wishes to educate his family in the knowledge and belief of it, nothing can be more offensive than to hear another speaking against it, and employing, not arguments (although even these he might let alone, because every man has a right even to err, without our forcibly interfering to rid him of his errors), but insolent and contemptuous language, and blaspheming its gods, its prophets, saints, and sacred things. Were the religion in question only *tolerated*, still the State is bound to protect every person who believes it, from such outrages, or it cannot blame him if he has not the patience to bear them. But if it be the established national religion, and of course the person not believing it be only tolerated by the State, and though he enjoys its protection just as if he were in a strange house, such an outrage is excessively gross; and unless we conceive the people so tame as to put up with any affront, and of course likely to play but a very despicable part on the stage of the world, the State has only to choose between the two alternatives, of either punishing the blasphemer himself or else leaving him to the fury of the people. The former is the milder plan, and therefore to be preferred, because the people are apt to gratify their vengeance without sufficient inquiry, and of course it may light upon the innocent.

“Nor is this by any means the treatment which I only claim for the religion which I hold to be the true one, I am also bound to admit it when I happen to be among a people from whose religion I dissent ; were I in a Catholic country to deride their saints or insult their religion by my behaviour, were it only by rudely and designedly putting on my hat when decency would have suggested the taking it off ; or were I in Turkey to blaspheme Mahomet, or in a Heathen city its gods, nothing would be more natural than for the people, instead of suffering it, to avenge the insult in their usual way, that is, tumultuously, passionately, and immoderately ; or else the State would, in order to secure me from the effects of their fury, be under the necessity of taking my punishment upon itself, and if it does so, it does a favour both to me and other dissenters from the established religion, because it secures us from still greater evils.”

It is not so clear, therefore, that some sort of protection for the constituted religion of the country is not a good thing, even for those who differ from it ; for if there were no such protection, the consequences pointed out by Michaelis might too probably ensue. It does not follow that because the objects of popular dislike differ in different ages ;—it does not follow (I wish it did) that the populace of our age are much wiser than the populace of earlier times. It is not so very long ago in our history since the populace of Birmingham wrecked the house and burnt the library of Dr. Priestley, a true philosopher, and excellent man. It was not the State which did that, it was the

populace. And it is therefore not so clear to my mind that some sort of blasphemy laws reasonably enforced may not be an advantage, even to those who differ from the popular religion of a country, and who desire to oppose and to deny it. Further, therefore, it must not be taken as so absolutely certain that all these laws against blasphemy are in principle tyrannical. Whether, however, they are so or not, if they exist we must administer them, and the principle upon which we are to administer them is to be found in the passage I have read from Starkie.

But I think I ought to go further, and to say that such study as I have been able to make of the cases has not satisfied me that the law ever was laid down differently from the law as laid down by Mr. Starkie. I do not pretend to have the time or learning to discuss with you exhaustively all the cases on the subject. I have taken a few of the leading ones, speaking roughly a century apart from each other, and I find the law, as I understand it and have laid it down to you, to be laid down practically in the same way in all these cases. It is perhaps worth observing that this law of blasphemous libel first appears in our books—at least that cases relating to it are first reported—shortly after the curtailment or abolition of the jurisdiction of the Ecclesiastical Courts in matters temporal. Speaking broadly, before the time of Charles II. these things would have been dealt with as heresy; and the libellers so-called of more recent days would have suffered as heretics in earlier. But I pass to the cases which are reported. The first

of them is a case decided by that great lawyer Lord Hale, of whom Mr. Foote spoke with some respect. He was indeed a man of great intellectual power, of absolute integrity, whose life was that of a Christian saint. If Mr. Foote had read the full report of the trial of the witches before Lord Hale, he would have seen that Lord Hale was there doing what many a judge has had to do, was administering a law he did not like, and so gave to the accused persons every advantage which his great skill in the law fairly allowed him to give; but neither the prisoners nor the jury would take the advantage which he offered them. The case is curious, and he who reads it I think will say that it is a very terse and a very misleading analysis of it, that Lord Hale hung witches because of the language of the Bible; though no doubt the passages in Exodus and Deuteronomy were referred to. Any one who takes the pains to read the case through will see that, judging him even by the standard of the present day, there is much more to be said for Lord Hale's conduct on that occasion than the run of mankind believe. But in the case of Taylor (which I cite from Ventris, who was himself a judge, and who gives the best report) Lord Hale had the following words before him; and you must always take a case and an opinion with reference to the subject-matter as to which the case was decided or the opinion given. The words, as Ventris says, were "blasphemous expressions horrible to hear," viz., "that Jesus Christ was a bastard and a whoremaster, that religion was a cheat, and that he feared neither God, the

devil, or man." Those were the words on which Lord Hale had to decide in that case, and what he says is this: "Such kind of wicked blasphemous words are not only an offence to God and religion, but a crime against the laws, State, and Government, and therefore punishable in this court." That is what Lord Hale *held*, in one of the earliest cases on the subject. You may find expressions which seem to go further in the reasons which he gives, but before these cases are so glibly cited as they sometimes are, you should look and see what is the subject-matter of the decision. Lord Hale held "*such kind of wicked blasphemous words*" to be a blasphemous libel, and if they came before me I too should hold them without hesitation to be a blasphemous libel, though I am no more disposed to hang witches than Lord Hale really was.

The next case, on which much stress has been laid, and which is usually cited from *Strange*, though it is more fully and better reported in *Fitzgibbons*, is the case of *Woolston*, who was convicted of blasphemous discourses upon the miracles of our Lord, and the Court, as reported by *Fitzgibbons*, lay very great stress on what they call "*general and indecent attacks*," and carefully state that they did not intend to include disputes between men on controverted matters. That is the law as laid down by Lord Raymond, a great lawyer, no doubt, and a man of high character, though of much which Lord Raymond says and of many of the expressions in his judgment I think that time and change have destroyed the authority.

There is then the case which is commonly cited as bringing the law down almost to our own time—the case of *R. v. Waddington*, tried before Lord Tenterden, and reported in 1 B. & C. The words of the libel were that ‘Jesus Christ was an impostor, a murderer, and a fanatic.’ The Lord Chief Justice laid it down that it was a libel, and a jurymen asked the Lord Chief Justice whether a work which denied the divinity of Our Saviour was a libel. Now mark the answer given by Lord Tenterden, one of the most cautious and justly respected of men. “He answered that a work *speaking of Jesus Christ in the language referred to* was a libel.” That ruling was questioned in the King’s Bench before Lord Tenterden himself, and Bayley, Holroyd, and Best, JJ. The three Judges first named were as great lawyers as ever adorned our Bench; and though Best, J., was a much abler judge than it is now-a-days the fashion to call him, still no one but would consider him the inferior of the other three. But when the case was moved in the King’s Bench, Lord Tenterden said, “I told the jury that any publication in which Our Saviour was spoken of *in the language used in this publication* was a libel, and I have no doubt whatever that it is so. I have no doubt it is a libel to publish the words that *Our Saviour was an imposter, a murderer, and a fanatic.*” Mr. Justice Bayley says, “It appears to me that the direction of the Lord Chief Justice was perfectly right. There cannot be any doubt that a work *which does not merely deny the Godhead of Jesus Christ, but which states him to have been an impostor,*

and a murderer, is at common law a blasphemous libel." Mr. Justice Holroyd says, "I have no doubt whatever that *any publication in which Jesus Christ is spoken of in the language used in this book is a blasphemous libel*, and that therefore the direction was right in point of law." Mr. Justice Best gives a longer judgment, in more rhetorical language but to the same effect, and he concludes, "It is not necessary for me to say whether it be libellous to argue from the Scriptures against the divinity of Christ. *That is not what the defendant professes to do*. The legislature has never altered the law, nor can it ever do so while the Christian Religion is considered to be the basis of that law." Now this is the case which is often cited, I must think by those who have not read it, as an authority that any attack upon Christian doctrine, however respectful and decent in language, is by law a blasphemous libel. It is authority, as I think, for nothing of the kind. It binds me here no doubt, and I shall direct you according to what I conceive is its meaning.

There is another case, the last with which I shall trouble you, not indeed exactly in point, but which is sometimes cited in support of the proposition that to attack Christianity is to expose yourself to an indictment for libel. It is the case of *Cowan v. Milbourn*, decided in 1867, and reported in 2 L. R. Exch. 230. It was an action in which the owner of some rooms justified a breach of his contract to let them, on the ground that they were to be used for lectures directed against the character of Christ and his teaching, and

the defendant's justification was upheld by the Court. The late Lord Chief Baron undoubtedly goes the full length of the doctrine contended for, and from his reasons, on the grounds I have already stated, I respectfully dissent. But Lord Bramwell puts his concurrence in the judgment on a totally different ground. He bases it on the fact that the statute of William III. is still unrepealed; that these lectures were to be in contravention not of the common law—on that he is silent—but of this statute; and he is careful moreover to point out the distinction between a thing, such as prostitution for example, being “unlawful in the sense that the law will not aid it, which it may be, and yet that the law will not punish it.” So that, if I understand him, his authority cannot be invoked for the proposition that the proposed lectures were necessarily blasphemous libels or the subjects of indictment.

I think therefore that any one who calmly and carefully considers the cases will very much doubt whether the old law is really open to the attacks which have been made upon it. I doubt extremely whether if you carefully read through—not merely look at—the cases and master the facts upon which the decisions were pronounced, I doubt if they will be found to be so harsh and illiberal as it has been the fashion in modern times to describe them.

But whether this is so or not, Parliament at least has altered the law on these subjects; it is no longer the law that none but professors of Christianity can take part or have rights in the State; others have

now just as much right in civil matters as any member of the Church of England has. The condition of things is no longer what it was when these great judges pronounced the judgments which I think have been misunderstood, and strained to a meaning they do not warrant.

It is a comfort to think that things have been altered. I observe that in the case of *The Attorney-General v. Pearson*, decided by Lord Eldon in 1817 and reported in Merivale, he expressed a doubt whether the provisions of the 9 & 10 W. III. as to persons denying the Trinity were or were not repealed by a later statute of Geo. III. Some old things, and amongst them this statute, are shocking enough, and I do not defend them; but it must be remembered what was the state of the country when that statute passed—who was the king, what was the succession, what were the factions which divided the country, what were the feelings which naturally agitated Parliament. In these regards the statute is not perhaps defensible, but at least it is explicable. At all events, no man would dream of enacting such a statute now, and I trust that Lord Eldon's doubts will never be solved by a Court pronouncing them to be well founded.

Such are the rules, as I tell you, by which you are to judge of these libels. But further, you have heard a great deal, powerfully put by Mr. Foote, about the inexpediency of these laws in any view of them, and as to the way in which they are worked. To observe on this is the least pleasant part of my unpleasant duty, and I wish I could avoid it. It might perhaps

be enough to say that these are things with which you and I have nothing to do. We have to administer the law as we find it, and if we don't like it we should try to get it altered. In a free country, after full discussion and agitation, a change is always effected if it approves itself to the general sense of the community. Mr. Foote has told you that this movement against him and his friends is to be regarded as persecution; and it is true, as he has said, that persecution, unless thorough-going, seldom succeeds. Irritation, annoyance, punishment which stops short of extermination, very seldom alter men's religious convictions. Entirely without one fragment of historical exaggeration, I may say that the penal laws which fifty or sixty years ago were enforced in Ireland were unparalleled in the history of the world. They existed 150 years; they produced upon the religious convictions of the Irish people absolutely no effect whatever. The Irish people could not be exterminated. Everything possible by law short of actual extermination and personal violence was done, and done without the smallest effect. No doubt therefore persecution, unless it is far more thorough-going than anyone in England and in this age would stand, is, speaking generally, of no avail.

It is also true, that persecution is a very easy form of virtue. A difficult form of virtue is to try in your own life to obey what you believe to be God's will. It is not easy to do, and if you do it, you make but little noise in the world. But it is easy to turn on some one who differs from you in opinion, and in the guise of zeal for God's honour, to attack a man whose life

perhaps may be much more pleasing to God than is your own. When it is done by men full of profession and pretension, who choose that particular form of zeal for God which consists in putting the criminal law in force against some one else, many quiet people come to sympathize, not with the prosecutor but with the defendant. That will be so as human nature goes, and all the more if the prosecutors should by chance be men who enjoy the wit of Voltaire, who are not repelled by the sneer of Gibbon, and who rather relish the irony of Hume. It is still worse if the prosecutor acts not from the strange but often genuine feeling that God wants his help and that he can give it by a prosecution, but from partizan or political motives. Nothing can be more foreign from one's notions of what is highminded, noble, or religious; and one must visit a man who would so act, not for God's honour, but using God's honour for his own purposes, with the most disdainful disapprobation that the human mind can form.

However, the question here is not with the motives, of which I know nothing, nor with the characters, of which I know if possible less, of those who instituted these proceedings, but with the proceedings themselves, and whether they are legal. The way in which Mr. Foote defends himself is able, and well worthy of your attention; and you must say, after a few words from me, what you think of it.

Mr. Foote's case, as I understand it, is this (he will excuse me if I do not state it accurately): "I am not going to maintain," says he, "that this is all in the

best taste : some of it may be coarse ; some of it to men of education may give offence. It is intended to be an attack on Christianity ; it is intended distinctly to be an attack on what I have seen attacked in the publications of cultivated agnosticism. It is meant to point out that in the books which your professing Christians call sacred are to be found records of detestable crimes, of horrible cruelties, of the lives of sensual, selfish, cruel men, all of which are said to have been pleasing to Almighty God. I do mean to attack your representation of Almighty God. I say your books are not true ; I say your religion is what Tacitus called it—a detestable superstition. I mean this, and if I have said it in coarse language, that is because I have not sufficient culture or education to cull my words carefully. But I will bring before you a number of books sold on every bookstall of Mr. Smith, written by persons admitted to the very highest society in the land, in which not only are the same things to be found in point of matter, but I will read you passages in which there is very little difference in manner—passages, for example, from John Stuart Mill, from Grote, from Shelley” (I mention the dead that I may not wound the feelings of the living). “No one ever dreamed of attacking Shelley.” (He is wrong in fact, for Shelley’s publisher was prosecuted, and Shelley himself was deprived by Lord Eldon of the custody of his children.) “I will show you things written by these men quite as strong and quite as coarse, as anything to be found in these publications of mine ; and it is plain the law cannot be as

suggested, because it can never be true that a poor man cannot do what a rich man may ; it cannot be true that you may blaspheme if you blaspheme in civil language."

Such I understand, put into my own words, to be Mr. Foote's contention. On that I have two things to say : one in Mr. Foote's favour, and one against him. He wished to have it impressed upon you that he is not, and never has been a licentious writer in the sense in which Mr. Starkie uses the word licentious. He has not, he says, pandered to the sensual passions of mankind. You will have the documents before you, and you will judge for yourselves. For myself I should say that in this matter he is right. It is a thing in his favour, and he is entitled to have it said.

But upon the other point, if the law as I have laid it down to you is correct—and I believe it has always been so—if the decencies of controversy are observed, even the fundamentals of religion may be attacked without a person being guilty of blasphemous libel. There are many great and grave writers who have attacked the foundations of Christianity. Mr. Mill undoubtedly did so ; some great writers now alive have done so too ; but no one can read their writings without seeing a difference between them and the incriminated publications, which I am obliged to say is a difference not of degree but of kind. There is a grave, an earnest, a reverent, I am almost tempted to say, a religious tone in the very attacks on Christianity itself, which shows that what is aimed at is not insult

to the opinions of the majority of Christians, but a real, quiet, honest pursuit of truth. If the truth at which these writers have arrived is not the truth we have been taught, and which, if we had not been taught it, we might have discovered, yet because these conclusions differ from ours, they are not to be exposed to a criminal indictment. With regard to many of these persons therefore I should say they are within the protection of the law as I understand it.

With regard to some of the others, passages from whose writings Mr. Foote read, I heard them yesterday for the first time, I do not at all question that Mr. Foote read them correctly. I confess, as I heard them, I had, and have, a difficulty in distinguishing them from the alleged libels. They do appear to me to be open to the same charge, on the same grounds, as Mr. Foote's writings. He says many of these things are written in expensive books, published by publishers of known eminence; that they are to be found in the drawing-rooms, studies, libraries, of men of high position. It may be so. If it be, I will make no distinction between Mr. Foote and anyone else; if there are men, however eminent, who use such language as Mr. Foote, and if ever I have to try them, troublesome and disagreeable as it is, if they come before me, they shall, so far as my powers go, have neither more nor less than the justice I am trying to do to Mr. Foote. If they offend against the Blasphemy laws they shall find that so long as the laws exist, whatever I may think about their wisdom, there is but one rule in this Court for all who come to it.

This much Mr. Foote may depend upon. So far as I can judge, some of the expressions which he read seemed to be strong, shall I say, coarse?—expressions of contempt and hatred for the generally recognised truths of Christianity and for the Hebrew Scriptures which are said to have been inspired by God Himself. But Mr. Foote must forgive me for saying that this is no argument whatever in his favour. Let me explain.

It is no argument for a burglar or a murderer (I mean no offence to Mr. Foote, I should be unworthy of my position if I insulted any one in his)—it is no argument, I say, in favour of a murderer or a burglar that some other person has also committed a burglary or a murder. Because in the infinite variety of human affairs some persons may have escaped, that is no reason why others should not be brought to justice. If he is correct in his citations from these writers, it seems to me that some of them are fairly liable to such a prosecution as his. Suppose they are; that does not show that he is not. What Mr. Foote had to show was not that other people were bad, but that he was good; not that other persons were guilty, but that he was innocent. It is no answer to bring forward these other cases. It is not enough to say these other persons have done these things, if they are not brought before us.

Gentlemen, I not only admit, but I urge upon you, and on every one who hears me, that whilst laxity in the administration of the law is bad, the most odious laxity of all is discriminating laxity, which lays hold of particular persons and lets other persons equally

guilty go scot free. That may be, that is so, but it has nothing to do with this case. The question here is not whether other persons ought to be standing where Mr. Foote and Mr. Ramsey now stand; but what judgment we ought to pass on Mr. Foote and Mr. Ramsey, who do stand here.

In short and in fine, we have to administer the law whether we like it or no. It is undoubtedly a disagreeable law, or may become so, but I have given you some reasons for thinking it not so bad nor so indefensible as Mr. Foote has argued that it is. I think it, on the contrary, a good law that persons should be obliged to respect the feelings and opinions of those amongst whom they live. I assent to the passage from Michaelis, that in a Catholic country we have no right to insult Catholic opinion, nor in a Mohammedan country have we any right to insult Mohammedan opinion. I differ from both, but I am bound as a good citizen to treat with respect opinions with which I do not agree.

Take these publications with you; look at them; if you think they are permissible attacks on the religion of the country you will find the defendants Not guilty. Take these cartoons. Mr. Foote says they are not attacks upon, and are not intended for caricatures of, Almighty God. If there be such a being, says Mr. Foote, he can have no feeling for Almighty God but profound reverence and awe, but this he says is his mode of holding up to contempt what he calls a caricature of that ineffable Being as delineated in the Hebrew Scriptures. That is for you to try.

Look at them and judge for yourselves whether they do or do not come within the widest limits of the law. If they do, then as with the libels find the defendants Not guilty. But if you think that they do not come within the most liberal and largest view that any one can give of the law as it exists now, then find them Guilty. Whatever may be the consequences—you may think the prosecution unwise, you may think the law undesirable, you may think no publications of this sort should ever be made the subject of criminal attack (I do not say you do think so, but you may), it matters not—your duty is to obey the law ; not to strain it in favour of the defendants because you do not like the prosecution ; not to strain it against them because you do not yourselves agree with the statements they advocate, as you are certain entirely to disapprove of the manner in which they advocate them. Take all these alleged libels into your consideration and say whether you find Mr. Foote or Mr. Ramsey, both or either, Guilty or Not guilty of this publication.

THE END.

